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1-26-2016

# HOSPITALS. EXECUTIVE COMPENSATION. INITIATIVE STATUTE.

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November 20, 2015

Direct: (213) 452-6576

**VIA FEDERAL EXPRESS**

Ms. Ashley Johansson  
Initiative Coordinator  
Office of the Attorney General  
1300 I Street  
Sacramento, CA 95814-2919

**RECEIVED**  
NOV 20 2015

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

**Re: Request for Circulating Title and Summary  
"Hospital Executive Compensation Act of 2016" Initiative**

Dear Ms. Johansson:

We serve as counsel for the proponents of the enclosed proposed statewide initiative, the "Hospital Executive Compensation Act of 2016." The proponents of the proposed initiative are:

- Benjamin L. Tracey
- Nathan Jon Selzer

On their behalf, I am enclosing the following documents:

- Proponents' Request for Circulating Title and Summary
- Proponent signatures to be incorporated with the Request for Circulating Title and Summary
- Proponent certifications pursuant to Elections Code section 9001(b)
- Proponent certifications pursuant to Elections Code section 9608
- A check in the amount of \$200
- Text of the "Hospital Executive Compensation Act of 2016" Initiative

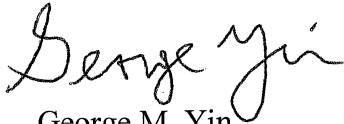
Please note that the public contact information for all of the proponents, for purposes of Elections Code section 9001(b)(2), and all inquiries or correspondence relative to this proposed initiative, should be directed to:

Ms. Ashley Johansson  
November 20, 2015  
Page 2

George M. Yin  
Kaufman Legal Group  
777 S. Figueroa Street, Suite 4050  
Los Angeles, CA 90017  
Tel: (213) 452-6565  
E-mail: [gyin@kaufmanlegalgroup.com](mailto:gyin@kaufmanlegalgroup.com)

If you have any questions, please do not hesitate to contact me.

Very truly yours,



George M. Yin

Enclosures

November 20, 2015

**VIA FEDERAL EXPRESS**

Ms. Ashley Johansson  
Initiative Coordinator  
Office of the Attorney General  
1300 I Street  
Sacramento, CA 95814-2919

**Re:           Request for Circulating Title and Summary**  
**Our File No.: SEI3505.001**

Dear Ms. Johansson:

Pursuant to Article II, § 10(d) of the California Constitution, this letter respectfully requests that the Attorney General prepare a circulating title and summary of the enclosed proposed statewide initiative, the "Hospital Executive Compensation Act of 2016."

Also please find enclosed:

- Proponent signatures to be incorporated with this Request for Circulating Title and Summary
- Proponent certifications pursuant to Elections Code § 9001(b)
- Proponent certifications pursuant to Elections Code § 9608
- Check in the amount of \$200

Please direct all inquiries and correspondence regarding this proposed initiative to:

George M. Yin  
Kaufman Legal Group  
777 S. Figueroa Street, Suite 4050  
Los Angeles, CA 90017-5864  
Tel: (213) 452-6565  
E-mail: [gyin@kaufmanlegalgroup.com](mailto:gyin@kaufmanlegalgroup.com)

Thank you for your time and attention to this matter.

Very truly yours,

Benjamin L. Tracey

Proponent

  
Signature of Proponent

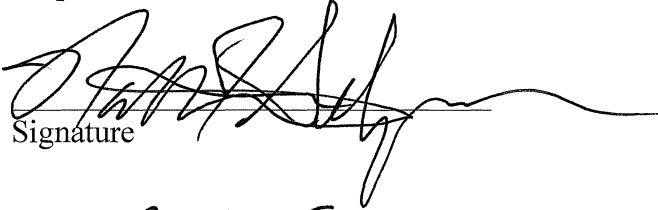
Nov 19, 2015  
Date

[See attachments for signature of the other proponent]

Attachment to "Request for Circulating Title and Summary"

**Nathan Jon Selzer**

Proponent

A handwritten signature in black ink, appearing to read 'Nathan Selzer', written over a horizontal line.

Signature

11-19-2015

Date

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure amends and adds sections to the Business & Professions Code, Corporations Code, and Government Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout~~ type and new provisions proposed to be added are printed in *italic* type to indicate that they are new.

## SEC. 1. Name

This act shall be known as the “Hospital Executive Compensation Act of 2016.”

## SEC. 2. Findings and Purposes

This act, adopted by the people of the State of California, makes the following Findings and has the following Purposes:

### A. The People make the following findings:

- (1) The compensation packages of chief executive officers, executives, managers, and administrators of hospitals, hospital groups, and affiliated medical entities that operate under nonprofit corporate status are often excessive, unnecessary, and inconsistent with the corporations’ charitable purposes, as revealed by compensation surveys and other sources.
- (2) Payment of excessive compensation to executives, managers, and administrators undermines the purposes of nonprofit corporations because it results in fewer funds being available for their charitable purposes, and it is often the case that the hospitals, hospital groups, and affiliated medical entities that pay the most excessive compensation also provide less charitable care than comparable institutions that pay reasonable compensation to their executives, managers, and administrators.
- (3) Existing requirements of law do not adequately ensure that assets held for charitable purposes are not instead used to enrich executives, managers, and administrators of nonprofit hospitals, hospital groups, and affiliated medical entities through payment of excessive compensation.
- (4) The compensation packages for chief executive officers, executives, managers, and administrators of for-profit hospitals in California are often excessive, unnecessary, and inconsistent with the provision of high-quality, affordable medical care, by diverting funds that could be used to expand access to affordable medical care for all Californians.
- (5) Executives, managers, and administrators of hospitals, hospital groups, and affiliated medical entities can be reasonably compensated without receiving more than the President of the United States of America, currently \$450,000 per year.

### B. Purposes:

- (1) It is the purpose of this Act to ensure that compensation packages for chief executive officers, executives, managers, and administrators of nonprofit hospitals, hospital groups, and affiliated medical entities are consistent with the charitable purposes of such

nonprofits and are reasonable and not excessive in light of the substantial public benefit that the State tax exemption for nonprofit organizations conveys.

(2) It is further the purpose of this Act to ensure that compensation packages for chief executive officers, executives, managers, and administrators of for-profit hospitals are consistent with the goal of providing affordable, high-quality medical care to all Californians.

(3) This Act would achieve these purposes by limiting such chief executive officers, executives, managers, and administrators to compensation packages of no more than the compensation received by the President of the United States of America, which is currently \$450,000 per year.

(4) This Act is intended to be budget neutral for the State to implement and administer.

SEC. 3. Section 12586.3 is added to Article 7 of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code, to read:

*12586.3. (a) The board of directors of a nonprofit corporation that owns, operates, or controls, in whole or in part, a covered hospital or medical entity shall ensure that no person whose primary duties at or for a covered hospital or medical entity are executive, managerial, or administrative receives total annual compensation from any source for work performed or services provided at or for the covered hospital or medical entity that is greater than the annual salary and expense allowance of the President of the United States as set forth in Section 102 of Title 3 of the United States Code.*

*(1) "Total annual compensation" includes all remuneration paid, earned, or accrued in the course of a fiscal year for work performed or services provided, including the cash value of all remuneration (including benefits) in any medium other than cash, except as otherwise specified in paragraph (2) of this subdivision. Total annual compensation includes, but is not limited to, wages; salary; paid time off; bonuses; incentive payments; lump-sum cash payments; the fair market value of below market rate loans or loan forgiveness; housing payments; payments for transportation, travel, meals, or other expenses in excess of actual documented expenses incurred in the performance of duties; payments or reimbursement for entertainment or social club memberships; the cash value of housing, automobiles, parking, or similar benefits; scholarships or fellowships; the cash value of dependent care or adoption assistance or personal legal or financial services; the cash value of stock options or awards; payments or contributions for insurance except as exempted in paragraph (2) of this subdivision, to a section 125 cafeteria plan or equivalent arrangement, to a health savings account, or for severance or its equivalent; and deferred compensation earned or accrued, even if not yet vested nor paid.*

*(2) "Total annual compensation" shall not include the cost of health insurance or disability insurance or payments or contributions to a health reimbursement account. Nor shall "total annual compensation" include the cost of any benefit or remuneration to the extent the inclusion of that benefit or remuneration in calculating total annual compensation would cause the limitation established by this subdivision to be preempted by federal law or to violate the state or federal constitution.*

*(3) The limitation on total annual compensation in this subdivision shall apply to arrangements made or authorized prior to, on, or after the effective date of this section.*

*(4) Any scheme or artifice that has the purpose of avoiding the limitation established by this subdivision shall constitute a violation of this subdivision.*



*(b) The board of directors of a nonprofit corporation that owns, operates, or controls, in whole or in part, a covered hospital or medical entity shall ensure that the total value in the aggregate of the compensation or payments authorized or paid under a severance or similar post-service or post-employment arrangement for any person who formerly had primary duties at a covered hospital or medical entity that were executive, managerial, or administrative does not exceed the annual salary and expense allowance of the President of the United States as set forth in Section 102 of Title 3 of the United States Code.*

*(1) The total value of a severance or similar post-employment or post-service compensation arrangement or severance payments shall include the fair market value of all cash remuneration as well as the fair market value of all remuneration (including benefits) paid in any medium other than cash, as defined in subdivision (a), subject to the exclusion set forth in paragraph (2) of subdivision (a).*

*(2) Any scheme or artifice that has the purpose of avoiding the limitation established by this subdivision shall constitute a violation of this subdivision.*

*(c) For purposes of this section, a "covered hospital or medical entity" shall mean any of the following:*

*(1) A general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, or an acute psychiatric hospital, as defined in subdivision (b) of Section 1250 of the Health and Safety Code. "Covered hospital or medical entity" shall not include hospitals operated or licensed by the United States Department of Veterans Affairs or public hospitals as defined in paragraph (25) of subdivision (a) of Section 14105.98 of the Welfare and Institutions Code with the exception of hospitals owned or operated by a health care district organized pursuant to Chapter 1 of Division 23 of the Health and Safety Code (commencing with Section 32000).*

*(2) A hospital group, which shall mean any group of two or more hospitals described in paragraph (1) or any person, corporation, partnership, limited liability company, trust or other entity that owns, operates, or controls, in whole or in part, any such group.*

*(3) A hospital-affiliated medical foundation, which shall mean a medical foundation, as defined in subdivision (l) of Section 1206 of the Health and Safety Code, that is directly or indirectly, including through one or more intermediaries, controlled or owned by, or controlled or owned by the same person or entity as, a hospital, hospital group, hospital-affiliated physicians group, or nonprofit corporation that owns, operates, or controls, in whole or in part, a hospital, hospital group, or hospital-affiliated physicians group. A medical foundation shall be deemed a hospital-affiliated medical foundation if either or both of the following are true:*

*(A) The medical foundation is a disregarded entity of, or would be required to be designated as a related organization on Internal Revenue Service Form 990 (or its accompanying schedules or the successor of such forms or schedules) of, a hospital, hospital group, hospital-affiliated physicians group, or a nonprofit corporation that owns, operates, or controls, in whole or in part, a hospital, hospital group, or hospital-affiliated physicians group.*

*(B) A majority of the medical foundation's assets are owned by a hospital, hospital group, or hospital-affiliated physicians group or by a nonprofit corporation that owns, operates, or controls, in whole or in part, a hospital, hospital group, or hospital-affiliated physicians group, or the medical foundation owns a majority of the assets of a hospital, hospital group, or hospital-affiliated physicians group or of a nonprofit corporation that owns, operates, or controls, in whole or in part, a hospital, hospital group, or hospital-affiliated physicians group.*

*(4) A hospital-affiliated physicians group, which shall mean any physicians group or medical group that is directly or indirectly, including through one or more intermediaries, controlled or owned by, or controlled or owned by the same person or entity as, a hospital, hospital group, hospital-affiliated medical foundation, or a nonprofit corporation that owns, operates, or controls, in whole or in part, a hospital, hospital group, or hospital-affiliated medical foundation. A physicians group shall be deemed a hospital-affiliated physicians group if either or both of the following are true:*

*(A) The physicians group is a disregarded entity of, or would be required to be designated as a related organization on Internal Revenue Service Form 990 (or its accompanying schedules or the successor of such forms or schedules) of, a hospital, hospital group, or hospital-affiliated medical foundation or a nonprofit corporation that owns, operates, or controls, in whole or in part, a hospital, hospital group, or hospital-affiliated medical foundation.*

*(B) A majority of the physicians group's assets are owned by a hospital, hospital group, or hospital-affiliated medical foundation or a nonprofit corporation that owns, operates, or controls, in whole or in part, a hospital, hospital group, or hospital-affiliated medical foundation.*

*(d) Any compensation paid for work performed or services provided by a person whose primary duties are or were executive, managerial, or administrative shall be included in determining the total compensation subject to the limit set forth in subdivisions (a) or (b), even if that person also performs or performed other duties.*

*(1) Persons whose primary duties are or were executive, managerial, or administrative include, but are not limited to, chief executive officers, chief executive managers, chief executives, executive officers, executive directors, chief financial officers, presidents, executive presidents, vice presidents, executive vice presidents, and other comparable positions.*

*(2) This section does not impose limits on the compensation of medical or health care professionals whose primary duties are or were the provision of medical services, research, direct patient care, or other non-managerial, non-executive, and non-administrative services.*

*(3) The compensation limits established by this section apply irrespective of whether the person exercising executive, managerial, or administrative authority is or was an employee of a covered hospital or medical entity or a nonprofit corporation that owns, operates, or controls, in whole or in part, a covered hospital or medical entity. These limits shall apply to any person who exercises or exercised such authority even if the arrangements for such authority or for compensation or both are pursuant to a contract or subcontract.*

*(e) (1) Payments, compensation, or remuneration for work performed or services provided at or for a covered hospital or medical entity shall count toward the limits set forth in this section even if made by a separate entity, including by any for-profit or unincorporated entity.*

*(2) Payments, compensation, or remuneration by a separate entity that is purported not to be for work performed or services provided at or for a covered hospital or medical entity but that is disproportionate to its purported purpose so as to evade the limitations in subdivisions (a) and (b) shall constitute a violation of this section.*

*(3) Payment of compensation or remuneration shall be deemed compensation for work performed or services provided at or for the covered hospital or medical entity if made by the covered hospital or medical entity or by any person, corporation, partnership, limited liability company, trust or other entity that is controlled by, is controlled by the same person or person as, is a supporting or supported organization of within the meaning of Sections 509(a)(3) and*

509(f)(3) of the Internal Revenue Code, is a disregarded entity of, or would be required to be designated as a related organization on Internal Revenue Service Form 990 (or its accompanying schedules or the successor of such forms or schedules) of a covered hospital or medical entity or a nonprofit corporation that owns, operates, or controls, in whole or in part, a covered hospital or medical entity.

(4) Payment of compensation or remuneration by any person, corporation, partnership, limited liability company, trust, or other entity that a covered hospital or medical entity, or a nonprofit corporation that owns, operates, or controls, in whole or in part, a covered hospital or medical entity, participates in, belongs to, is a member of, or pays into shall be presumed compensation for work performed or services provided at or for the covered hospital or medical entity.

(f) Within nine months of the close of each fiscal year, a covered hospital or medical entity shall post on a publicly available Internet website and make available to any member of the public upon request the following information:

(1) The names, positions or titles, and total annual compensation of all persons whose primary duties are executive, managerial, or administrative at or for the covered hospital or medical entity and who received more than the annual salary and expense allowance of the President of the United States as set forth in Section 102 of Title 3 of the United States Code in total annual compensation in that fiscal year, and the sources of such compensation. The information provided shall include a detailed breakdown of all wage and nonwage compensation and shall identify any benefit or remuneration excluded from the definition of total annual compensation pursuant to paragraph (2) of subdivision (a).

(2) The names, former positions or titles, and compensation paid pursuant to a severance or similar post-employment arrangement to all persons who received more than the annual salary and expense allowance of the President of the United States as set forth in Section 102 of Title 3 of the United States Code in total severance compensation in that fiscal year and who formerly had primary duties at or for a covered hospital or medical entity that were executive, managerial, or administrative, and the sources of such compensation. The information provided shall include a detailed breakdown of all wage and nonwage compensation and shall identify any benefit or remuneration excluded pursuant to paragraph (1) of subdivision (b).

(g) (1) Each nonprofit corporation that owns, operates, or controls, in whole or in part, a covered hospital or medical entity shall, for each covered hospital or medical entity that it owns, operates, or controls, within nine months of the close of its fiscal year, file with the Attorney General and make available to any member of the public upon request an annual report setting forth the information described in subdivision (f) and identifying each entity that has provided compensation, in any form, to the persons identified therein and the amount of such compensation.

(A) The annual report must be submitted on the form or in the format required by the Attorney General.

(B) The board of directors of a nonprofit corporation that owns, operates, or controls, in whole or in part, a covered hospital or medical entity shall approve the annual report before it is submitted to the Attorney General. Each director shall have a duty to act in good faith and with reasonable care and inquiry in approving the annual report and in ensuring that the corporation complies with the requirements of this section.

*(C) The annual report must state that it was approved by the board of directors and set forth the date of such approval, and must be attested to under penalty of perjury by an authorized representative of the covered hospital or medical entity.*

*(2) The Attorney General is authorized and directed to establish and assess fees, to be submitted with each annual report, to cover the costs of implementing and enforcing this section and each activity authorized or required by this section.*

*(h) In addition to any other enforcement actions available under the law, and notwithstanding any other provision of law, the Attorney General or any state taxpayer may bring or intervene in a civil action for a violation of this section for the civil penalties authorized by paragraph (2) of subdivision (c) of Section 12591.1, any other authorized civil fines or penalties, and appropriate equitable relief.*

*(1) Appropriate equitable relief may include, but is not limited to, revocation of tax-exempt status under Section 23701 of the Revenue and Taxation Code and revocation of nonprofit corporate status. In the event a nonprofit corporation seeks to change its status to a for-profit corporation as a result of such revocation, the corporation shall be required to distribute all of its charitable assets in accordance with their charitable purposes with the approval of the Attorney General and:*

*(A) Section 5813.5 of the Corporations Code shall apply;*

*(B) In the event the nonprofit corporation operates or controls a health facility as defined in Section 1250 of the Health and Safety Code, the provisions of Article 2 (commencing with Section 5914) of Chapter 9 of Part 2 of Division 2 of Title 1 of the Corporations Code shall apply; and*

*(C) If the provisions of Article 2 (commencing with Section 5914) of Chapter 9 of Part 2 of Division 2 of Title 1 of the Corporations Code do not apply, Section 5913 of the Corporations Code shall apply.*

*(2) Before filing an action under this section, a taxpayer shall give written notice to the Attorney General of the alleged violation and the intent to bring suit. If the Attorney General commences a civil action for the same alleged violation within 60 days of receiving the notice, a separate action by the taxpayer shall be barred.*

*(3) A prevailing plaintiff in any action under this section is entitled to recover reasonable attorneys' fees and costs, including but not limited to expert witness fees.*

*(i) The exemptions from filing, registration, and reporting provisions set forth in Section 12583 shall not apply to the requirements of this section, which shall apply without restriction to all charitable and nonprofit corporations that own, operate, or control, in whole or in part, covered hospitals or medical entities.*

*(j) In order to qualify for and maintain tax-exempt status pursuant to Section 23701 of the Revenue and Taxation Code, a nonprofit corporation that owns, operates, or controls, in whole or in part, a covered hospital or medical entity shall comply with the requirements of this section.*

*(k) Notwithstanding any other provision of law or any provision in a nonprofit corporation's charter or bylaws, the Attorney General may, to promote the purposes of this section, investigate the affairs of and examine the books, accounts, records and files of the covered hospital or medical entity and any nonprofit corporation that owns, operates, or controls, in whole or in part, a covered hospital or medical entity, for the purposes of promoting compliance with this section.*

*(l) Notwithstanding any other provision of law or any provision in a nonprofit corporation's charter or bylaws, the Attorney General may, to promote the purposes of this section, appoint any person to serve as the Attorney General's representative on the board of directors of any nonprofit corporation that owns, operates, or controls, in whole or in part, a covered hospital or medical entity, based on non-compliance with subdivisions (a) or (b) of this section; provided that this subdivision shall not apply to a nonprofit religious corporation, as defined in Section 5061 of the Corporations Code, or a nonprofit foreign corporation, as defined in Section 5053 of the Corporations Code.*

*(1) A person appointed to the board of directors under this subdivision shall serve for a term of years set by the Attorney General and shall have all the rights, powers, and duties as other members of the board of directors. At no time shall more than one person serve as a representative of the Attorney General on any board based on noncompliance with this section, but this subdivision shall not preclude the Attorney General from appointing other representatives to any board for other reasons permitted by law.*

*(2) The Attorney General shall remove a person appointed to the board of directors under this subdivision if the Attorney General determines that the appointment is no longer reasonably necessary to achieve the purposes of this section. A nonprofit corporation may petition the Attorney General to remove a person appointed to its board of directors and the Attorney General shall grant such a petition if the appointment is no longer reasonably necessary to achieve the purposes of this section. The Attorney General may promulgate regulations governing the processing and approval and denial of such petitions.*

*(m) (1) Notwithstanding any other provision of law, this section shall apply to a hospital administrator employed by a health care district organized pursuant to Chapter 1 of Division 23 of the Health and Safety Code (commencing with Section 32000), including a hospital administrator who is designated as a chief executive officer, and to any person whose primary duties at or for a hospital operated or licensed by a health care district are executive, managerial, or administrative; provided, however, that subdivision (l) shall not apply to a health care district.*

*(2) The compensation limits established by this subdivision apply irrespective of whether the person exercising executive, managerial, or administrative authority with respect to the organization is or was an employee of the health care district or any hospital operated or licensed by a health care district. These limits shall apply to any person who exercises or exercised such authority even if the arrangements for such authority or for compensation or both are pursuant to a contract or subcontract. The compensation limits established by this subdivision shall apply irrespective of whether the person who exercises or exercised such authority is or was employed by a covered hospital or medical entity.*

SEC. 4. Section 12588 of the Government Code is amended to read:

12588. The Attorney General may investigate transactions and relationships of corporations and trustees subject to this article for the purpose of ascertaining whether or not the purposes of the corporation or trust are being carried out in accordance with the terms and provisions of Section 12586.3 or of the articles of incorporation or other instrument. He may require any agent, trustee, fiduciary, beneficiary, institution, association, or corporation, or other person to appear, at a named time and place, in the county designated by the Attorney General, where the person resides or is found, to give information under oath and to produce books,

memoranda, papers, documents of title, and evidence of assets, liabilities, receipts, or disbursements in the possession or control of the person ordered to appear.

SEC. 5. Section 12591.1 of the Government Code is amended and renumbered to read:

12591.1. (a) *Except as provided in paragraph (2) of subdivision (c), Any person who violates any provision of this article with intent to deceive or defraud any charity or individual is liable for a civil penalty not exceeding ten thousand dollars (\$10,000).*

(b) The Attorney General may issue a cease and desist order whenever the Attorney General finds that any entity or person that is subject to the provisions of this article pursuant to Section 12581, or its agent, servant, or employee, has committed an act that would constitute a violation of, or is operating in violation of, this article, or its implementing regulations, or an order issued by the Attorney General, including, but not limited to, all of the following:

(1) Has refused or failed, after notice, to produce any records of the organization or to disclose any information required to be disclosed under this article or Chapter 4 (commencing with Section 300) of Division 1 of Title 11 of the California Code of Regulations.

(2) Has made a material false statement in an application, statement, or report required to be filed under this article or Chapter 4 (commencing with Section 300) of Division 1 of Title 11 of the California Code of Regulations.

(3) Has failed to file a financial report, or has filed an incomplete financial report, that is required by this article or Chapter 4 (commencing with Section 300) of Division 1 of Title 11 of the California Code of Regulations.

(4) Has engaged in any act prohibited pursuant to Section 12599.6.

(c) (1) The Attorney General may impose a penalty on any person or entity, not to exceed one thousand dollars (\$1,000) per act or omission, for each act or omission that constitutes a violation of this article or Chapter 4 (commencing with Section 300) of Division 1 of Title 11 of the California Code of Regulations. At least five days prior to imposing that penalty, the Attorney General shall provide notice to the person or entity that committed the violation by certified mail to the address of record at the Registry of Charitable Trusts. Penalties shall accrue, commencing on the fifth day after notice is given, at a rate of one hundred dollars (\$100) per day for each day until that person or entity corrects that violation. Penalties shall stop accruing as of the date set forth in the written notice provided by the Attorney General that the violation or omission subject to penalties has been corrected or remedied.

(2) (A) *A violation of subdivision (a) or (b) of Section 12586.3 is a serious offense within the meaning of Sections 6511(a)(1) and 8511(a)(1) of the Corporations Code and is a ground for forfeiture of corporate existence within the meaning of Sections 6511(a)(3) and 8511(a)(3) of the Corporations Code.*

(B) *The Attorney General may impose a civil penalty on any person or entity for each act or omission that constitutes a violation of subdivision (a) or (b) of Section 12586.3, as follows:*

(i) *For a violation with intent to deceive or defraud, a civil penalty not exceeding two hundred thousand dollars (\$200,000).*

(ii) *For any other first offense, a civil penalty not exceeding one hundred thousand dollars (\$100,000).*

(iii) *For any subsequent offense, a civil penalty not exceeding two hundred thousand dollars (\$200,000).*

*(C) Each instance in which the annual limitations established by subdivision (a) or (b) of Section 12586.3 are exceeded for any single individual shall constitute a separate violation for purposes of this paragraph, such that multiple violations may occur and multiple fines may be imposed if more than one individual receives excessive compensation in a particular year or if a single individual receives excessive compensation in more than one year.*

(d) If the Attorney General assesses penalties under this section, the Attorney General may suspend the registration of that person or entity in accordance with the procedures set forth in Section 999.6 of Title 11 of the California Code of Regulations. Registration shall be automatically suspended until the fine is paid and no registration shall be renewed until the fine is paid.

(e) Any person or entity that the Attorney General has filed an action against pursuant to this section may request a hearing to review that action in accordance with the procedures set forth in Chapter 15 (commencing with Section 999.1) of Division 1 of Title 11 of the California Code of Regulations and rules adopted by the Attorney General. Any request for hearing shall be made within 30 days after the Attorney General has served the person with notice of the action. That notice shall be deemed effective upon mailing.

(f) The Attorney General may apply to a superior court of the State of California for relief, and the court may issue a temporary injunction or a permanent injunction to restrain violations of this chapter, appoint a receiver, order restitution or an accounting, or grant other relief as may be appropriate to ensure the due application of charitable funds. Those proceedings shall be brought in the name of the state.

(g) All penalties paid to the Attorney General pursuant to this section shall be used by the Department of Justice in accordance with the provisions of Section 12586.2.

(h) Any offense committed under this article involving a solicitation may be deemed to have been committed at either the place at which the solicitation was initiated or at the place where the solicitation was received.

(i) Any person who violates only subdivision (c), (d), (e), or (f) of Section 12586.1 shall not be liable for a civil penalty under subdivision (b) if the person (1) has not received reasonable notice of the violation and (2) has not been given a reasonable opportunity to correct the violation. The Attorney General shall notify in writing a person who violates only subdivision (c), (d), (e), or (f) of Section 12586.1 that he or she has 30 days to correct the violation.

(j) The recovery of a civil penalty pursuant to this section precludes assessment of a late fee pursuant to Section 12586.1 for the same offense.

SEC. 6. Section 12596 of the Government Code is amended to read:

12596. Any action brought by the Attorney General against trustees or other persons holding property in trust for charitable purposes or against any charitable corporation or any director or officer thereof *to enforce the terms of section 12586.3 or to enforce a charitable trust or to impress property with a trust for charitable purposes or to recover property or the proceeds thereof for and on behalf of any charitable trust or corporation*, may be brought at any time within ten (10) years after the cause of action shall have accrued.

SEC. 7. Section 9230 of the Corporations Code is amended to read:

9230. (a) Except as the Attorney General is empowered to act in the enforcement of the criminal laws of this state, and except as the Attorney General is expressly empowered by subdivisions (b), (c), and (d), *and Section 12586.3 of the Government Code*, the Attorney General shall have no powers with respect to any corporation incorporated or classified as a religious corporation under or pursuant to this code.

(b) The Attorney General shall have authority to institute an action or proceeding under Section 803 of the Code of Civil Procedure, to obtain judicial determination that a corporation is not properly qualified or classified as a religious corporation under the provisions of this part.

(c) The Attorney General shall have the authority (1) expressly granted with respect to any subject or matter covered by Sections 9660 to 9690, inclusive; (2) to initiate criminal procedures to prosecute violations of the criminal laws, and upon conviction seek restitution as punishment; and (3) to represent as legal counsel any other agency or department of the State of California expressly empowered to act with respect to the status of religious corporations, or expressly empowered to regulate activities in which religious corporations, as well as other entities, may engage.

(d) Where property has been solicited and received from the general public, based on a representation that it would be used for a specific charitable purpose other than general support of the corporation's activities, and has been used in a manner contrary to that specific charitable purpose for which the property was solicited, the Attorney General may institute an action to enforce the specific charitable purpose for which the property was solicited; provided (1) that before bringing such action the Attorney General shall notify the corporation that an action will be brought unless the corporation takes immediate steps to correct the improper diversion of funds, and (2) that in the event it becomes impractical or impossible for the corporation to devote the property to the specified charitable purpose, or that the directors or members of the corporation in good faith expressly conclude and record in writing that the stated purpose for which the property was contributed is no longer in accord with the policies of the corporation, then the directors or members of the corporation may approve or ratify in good faith the use of such property for the general purposes of the corporation rather than for the specific purpose for which it was contributed.

As used in this section, "solicited from the general public" means solicitations directed to the general public, or to any individual or group of individuals who are not directly affiliated with the soliciting organization and includes, but is not limited to, instances where property has been solicited on an individual basis, such as door to door, direct mail, face to face, or similar solicitations, as well as solicitations on a more general level to the general public, or a portion thereof, such as through the media, including newspapers, television, radio, or similar solicitations.

(e) Nothing in this section shall be construed to affect any individual rights of action which were accorded under law in existence prior to the enactment of Chapter 1324 of the Statutes of 1980.

As used in this section, "individual rights of action" include only rights enforceable by private individuals and do not include any right of action of a public officer in an official capacity regardless of whether the officer brings the action on behalf of a private individual.

(f) Nothing in this section shall be construed to require express statutory authorization by the California Legislature of any otherwise lawful and duly authorized action by any agency of local government.



SEC. 8. Section 17206.2 is added to the Business and Professions Code as follows:

17206.2. (a) *This section shall apply to a corporation operated for profit under Division 1 of Title 1 of the Corporations Code (commencing with section 100), and shall apply to a foreign corporation with respect to any covered hospitals owned or operated by that corporation for profit within the State.*

(b) *Notwithstanding any other provision of law, the board of directors of a corporation that owns, operates, or controls, in whole or in part, a covered hospital shall ensure that no person whose primary duties at or for a covered hospital are executive, managerial, or administrative receives total annual compensation from any source for work performed or services provided at or for the covered hospital that is greater than the annual salary and expense allowance of the President of the United States as set forth in Section 102 of Title 3 of the United States Code.*

(1) *“Covered hospital” means a hospital that is operated for profit and that is licensed under subdivisions (a) or (b) of Section 1250 of the Health and Safety Code.*

(2) *“Total annual compensation” shall mean have the meaning set forth in subdivision (a) of Section 12586.3 of the Government Code. Subdivisions (d) and (e) of Section 12586.3 of the Government Code shall apply to the determination of total annual compensation.*

(c) *Notwithstanding any other provision of law, the board of directors of a corporation that owns, operates, or controls, in whole or in part, a covered hospital or medical entity shall ensure that the total value in the aggregate of the compensation or payments authorized or paid under a severance or similar post-service or post-employment arrangement for any person who formerly had primary duties at a covered hospital or medical entity that were executive, managerial, or administrative does not exceed the annual salary and expense allowance of the President of the United States as set forth in Section 102 of Title 3 of the United States Code. The value of the severance or similar post-service or post-employment arrangement shall be determined pursuant to subdivision (b) of Section 12586.3 of the Government Code.*

(d) *A covered hospital shall comply with subdivision (f) of Section 12586.3 of the Government Code.*

(e) *A covered hospital shall comply with subdivision (g) of Section 12586.3 of the Government Code.*

(f) (1) *In addition to any liability for a civil penalty pursuant to Section 17206, a corporation that violates subdivisions (b) or (c) shall be liable for an additional civil penalty for each violation as follows:*

(A) *For a violation with intent to deceive or defraud, a civil penalty not exceeding two hundred thousand dollars (\$200,000).*

(B) *For any other first offense, a civil penalty not exceeding one hundred thousand dollars (\$100,000).*

(C) *For any subsequent offense, a civil penalty not exceeding two hundred thousand dollars (\$200,000).*

(2) *Each instance in which the annual limitations established by subdivisions (b) or (c) are exceeded for any single individual shall constitute a separate violation for purposes of this section, such that multiple violations may occur and multiple fines may be imposed if more than one individual receives excessive compensation in a particular year or if a single individual receives excessive compensation in more than one year.*

(3) *The civil penalties set forth in this subdivision are cumulative of any other relief available for a violation of this section pursuant to any other provision of law.*

(g) (1) *Notwithstanding any other provision of law, an action for injunctive relief to enjoin a violation of this section or to recover the civil penalties provided for in subdivision (f) may be brought by the Attorney General or by any person acting for the interest of itself, its members, or the general public, irrespective of whether the person has suffered injury in fact or lost money or property as a result of the violation.*

(2) *A prevailing plaintiff in any action under this section is entitled to recover reasonable attorneys' fees and costs, including but not limited to expert witness fees.*

## SEC. 9. Amendment

Pursuant to subdivision (c) of Section 10 of Article II of the California Constitution, this act may be amended either by a subsequent measure submitted to a vote of the people at a statewide election; or by statute validly passed by the Legislature and signed by the Governor, but only if consistent with, or to further the purposes of, the Hospital Executive Compensation Act of 2016.

## SEC. 10. Competing Measures

In the event this measure and another measure that limits maximum compensation for executives, managers, or administrators at some or all covered hospitals and medical entities shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. Another measure that regulates charity care or discounted services that hospitals must provide or that limits prices hospitals may charge for all health care services or items shall not be deemed to be in conflict with this measure. Another measure shall not be deemed to be in conflict with this measure solely because it amends one or more of the sections of the Government Code or Corporations Code amended by this measure. In the event this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

## SEC. 11. Severability

It is the intent of the People that the provisions of this act are severable and that if any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of this act that can be given effect without the invalid provision or application.

## SEC. 12. Legal Challenges

Notwithstanding any other provision of law, if the State, government agency, or any of its officials fail to defend the constitutionality of this Act, following its approval by the voters, any other government employer, the proponent, or in his or her absence, any citizen of this State shall have the authority to intervene in any court action challenging the constitutionality of this Act for the purpose of defending its constitutionality, whether such action is in trial court, on

appeal, and on discretionary review by the Supreme Court of California and/or the Supreme Court of the United States. The fees and costs of defending the action shall be a charge on funds appropriated to the Attorney General, which shall be satisfied promptly.

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

**HOSPITALS. EXECUTIVE COMPENSATION. INITIATIVE STATUTE.** Prohibits hospitals, hospital groups, hospital-affiliated medical foundations and physicians groups, and health care districts from paying annual compensation (salary, perks, paid time off, bonuses, stock options, etc.) or providing severance packages to executives, managers, and administrators in an amount exceeding the salary and expense allowance of the President of the United States (currently \$450,000). Requires annual public disclosure of all executives receiving compensation or severance packages above this amount. Authorizes Attorney General monitoring and enforcement or taxpayer litigation. Penalties for violation include fines, revocation of tax-exempt status, and appointment of Attorney General representative to board of directors of nonprofit corporations. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **State administrative costs in the low millions of dollars annually to enforce the measure, with authority to recover costs through fees assessed on specified hospitals.** (15-0111.)